Supreme Court of the United States

OCTOBER TERM

19 59

NO. 19

UNITED MINE WORKERS OF AMERICA and
UNITED MINE WORKERS OF AMERICA,
DISTRICT 28 — PETITIONERS

v. BRIEF ON BEHALF OF RESPONDENT

BENEDICT COAL CORPORATION — RESPONDENT

BRIEF OF RESPONDENT IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

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IN THE

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NO. 563

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your respondent respectfully states that a Writ of Certiorari should not issue to review the judgment of the United States Court of Appeals for the Sixth Circuit on the grounds assigned by the petitioners.

STATEMENT OF THE CASE

I.

Your respondent accepts the statement of the pleadings, trial proceedings and the Sixth Circuit's judgment as set out by the petitioners with this addition. The Sixth Circuit

also determined that three of the eleven strikes involved did not constitute violations of the contract. The Sixth Circuit also set aside certain items of damage resulting from the cessation of work by M. M. Campbell which items had been allowed by the trial court.

II.

Your respondent would add to the statement of facts concerning the various strikes:

There was a conflict in evidence during the trial on a lot of the facts concerning the various strikes. All conflicts were resolved in the appellee's favor by the jury's verdict, and we will, therefore, note the pertinent facts as shown by the appellee's evidence. These strikes covered a period from April, 1950, through May, 1953. This suit concerns eleven of the strikes but during that period of time there were many strikes, not all of which are shown as damaging Benedict (R. 680.) We are only dealing in this suit with those strikes which occurred at times when they were damaging to Benedict. Other strikes occurred at short work periods and therefore were not directly damaging. The number and the continued incidence of the strikes show a system or pattern on the part of the men in the Union to use the strike system for getting their way in case of differences with the management. Plaintiff's evidence shows that this system was suggested to the men by a field representative of the Union (R. 408a) and further that this field representative advised them that they can't come out and tell them when to strike but if they don't get what they want they know what to do and that this advice was given prior to the first strike in issue in this suit (R. 424a) Appellee's evidence also shows that District 28 or the International Union never exercised any effort through available disciplinary measures to prevent stoppages of work by strike pending adjustment of disputes

The abbreviation "R" refers to the joint appendix to the brief of appellant used in the court below and which is part of the printed certified record in this court.

(R. 216a, 411a and 412a). The defendant Unions offered no evidence to refute this and in effect admitted a breach of the 1950 agreement on that score.

The appellee tried to arbitrate all of the strikes except the one over the water shortage and were turned down. (R. 215a) Benedict's position was that each of the strikes involved in the suit was a violation of the collective bargaining agreement then in force and that two of them were further in violation of Section 303 of the Labor Management Relations Act. In each of the following numbered paragraphs we state the pertinent facts of the various strikes as shown by appellee's evidence.

(1) THE STRIKE OF APRIL 14 and 17, 1950, OR THE SENIORITY STRIKE:

When Benedict entered into the contract of March 5, 1950, they were working the No. 11 and No. 7 seams which were about to be worked out, and from those two seams Benedict was moving into No. 9 and No. 10 seams. The No. 7 seam worked out faster than was ideal and work places could not be furnished to all of the men in No. 7 and forty or fifty men had to be cut off when certain sections of the mine worked out. Those men claimed jobs in the other two seams of coal. There was a dispute over that with the men, and a strike resulted on April 14 and April 17, 1950. (R. 155a and 156a). Benedict called the Committee and the Field Representative of District 28 to come down, and a meeting was had on Saturday, April 15. At the meeting Benedict asked Scroggs to get the men back to work and to arbitrate the various grievances of the various men. Mr. Scroggs did not agree to that (R. 459a). After arguing the matter out until after dark, Benedict finally gave in and tried to place the men as nearly as possible to not hamper the efficiency of the mine. (R. 160a). To the knowledge of Mr. Darst neither Mr. Scroggs nor anyone else in the district took any disciplinary steps toward the Local members to discourage or prevent that stoppage. (R. 160a).

James Scott, a former Committeeman, testified that Mr. Seroggs, the District Representative, told them, "Boys, I can't tell you"—he says, "I can't tell you boys when to strike. I can't come out and tell you to strike, but when I tell you when you don't get what you want why you boys know what to do then." (R. 408a). On direct examination Scott didn't remember whether they were told right at that time or not but that Seroggs told him that several times. On redirect examination Scott further testified that this was previous to the lay-off strike. (R. 424a). Scott also testified that during the period from March, 1950, to September, 1952, that neither Mr. Seroggs nor any District 28 agent or officer ever punished him or his Local for striking, (R. 411a, 412a), and further that during that period they never told them not to strike. (R. 412a). Scott further testified in speaking of Mr. Seroggs or any district 28 agent or officer:

"Q. Did they ever during the period of time from March, 1950, through May, 1953, tell you all to arbitrate your disputes with the company?

A. No. They just told us; the only way they told us, when we didn't get what we wanted we knowed what to do." (R. 412a)

(2) THE STRIKE OF JULY 30-31, 1951, OR THE VACATION PAY STRIKE:

Between January and July 1951 Benedict's No. 5 mine was developed far enough to close down the operation on top of the mountain. The closing down of those mines caused a cutoff of quite a number of men. Those men had been carried and had been granted credit by the company, and they were due vacation pay up through the time of their cutoff, at the vacation time in July. Vacation pay is paid the last regular payday in June before the vacation which, at the time, was a 10 day period around the 4th of July.

The company endeavored to collect some of the moneys that was owed by these individuals from the vacation pay.

not necessarily all of the vacation pay but enough of it to regain some of the money that was extended to these men on credit. This did not involve employees of Benedict but rather former employees that had been cut off due to the closing down of certain of the mines. It did not involve too many men.

A lot of the former employees, that were not in debt to the company, got their whole vacation pay. After wrangling about it through July the Benedict employees struck on July 30th and 31st and demanded that the ex-employees get their vacation pay in full. The men who struck were not the same men that had their vacation pay withheld but were the men that were still working. (R. 166a).

Benedict tried to settle the matter in two or three meetings during July at which time Mr. Scroggs was there as the Field Representative. The company asked for arbitration of the matter, but Mr. Scroggs said that the men were due all of the vacation pay in cash and also said after one of the meetings was over in Mr. Darst's hearing, "Boys, it looks like you are going to have to take this matter into your hands." Scroggs made that statement to the Committee. (R. 167a). After that statement was made, they had the strike on July 30th and 31st. Darst believed that at the time Scroggs made the statement that "This isn't a matter for arbitration. We won't arbitrate it." (R. 167a). Darst also testified that the company asked the board to arbitrate it and Mr. Scroggs politely refused to let it go to arbitration. (R. 277a). During the strike they worked out the plan of asking each individual from whom all or a portion of the vacation pay had been withheld to come in and talk individually with the bookkeepers, to see if they would give Benedict a proportion of their vacation pay voluntarily to apply against their account owing the company. Benedict collected some moneys that way and divided with the men, and the employees voted to go back to work. (R. 168a). This strike was necessarily after the Union's failure to discipline the men for previous strikes and to use their best efforts through available

disciplinary measures to prevent stoppages of former strikes and this strike.

(3) THE STRIKE OF OCTOBER 1-8, 1951, OR THE CREDIT STRIKE:

Prior to October, 1951, Benedict had been extending credit to a portion of the men who had been laid off from the end of February, 1951, up to that time. The company had run its string out on extending credit to those men. These were men who were marked to go into the No. 5 mine when that mine had developed to the point where Benedict could put them to work. (168a). These men were not employees but were former employees. The company told them that they could no longer stand for the $3.00 per day per man that they were giving them, and the employees that were still working struck. (R. 168a).

"Before this strike the Mine Committee asked for a meeting. They had a meeting with Darst. (R. 280a). No arbitration was suggested at the meeting and nothing was said in the meeting that there was going to be a work stoppage. (R. 281a, 281b). The strike lasted from the afternoon of October 1 through October 8. The company had no forewarning that the strike was going to happen and, as Darst put it, "We simply asked the union, the local union, to carry those men and advance them money since the company could no longer stand the amount that was being required to keep them alive." (R. 169a). After the strike Darst met with the Mine Committee and tried to get them to arbitrate it, and their position was "You continue to keep these men on credit and we will go back to work." (R. 169a). After that the company called in Mr. Scroggs and had another meeting, and his attitude was, "Extend these men credit, and we will go back to work."

In one of the meetings the Local Union agreed to guarantee credit to the men who were waiting to be put to work and who were moving away and leaving from time to time; and with that the company began to give them credit again, and the employees went back to work. (R. 170a).

This was necessarily after the instructions to Scott that if they didn't get what they wanted they knew what to do and after the Union's failure to discipline the men for previous strikes and to use their best efforts through available disciplinary measures to prevent previous strikes and this strike.

(4) THE STRIKE OF NOVEMBER 2, 7, 1951, or THE ERNEST TABOR STRIKE:

Prior to November, 1951, Benedict had an employee by the name of Ernest Tabor who was a chronic absentee. This man was absent at least one-third of the time, and Benedict discharged him for chronic absenteeism. After this discharge Benedict struck one day, being November 2. After Tabor's failure to obtain employment at another mine Benedict's employees struck another day, being November 7. Benedict's employees struck because they wanted Tabor taken back to work. (R. 171a, 172a, 173a). One of Benedict's representatives testified that Mr. Clark came down on that strike, and another one testified that Mr. Scroggs came down although that witness couldn't say for sure. (R. 418a). In either event a Field Representative was down. According to Mr. Dirst the company asked to arbitrate it, but they would not do it. (R. 173a). The company took the man back to work and gave in to the Union so that they could get back to work. (R. 173a).

This was necessarily after the previous instructions given to Scott when they didn't get what they wanted they knew what to do and was after the Union's failure to discipline the Local or its members for previous strikes and after the Union's failure to use their best efforts through available disciplinary measures to prevent strikes.

(5) THE STRIKES OF FEBRUARY 7, 8 AND APRIL 24, 25, 1952, OR THE M. M. CAMPBELL STRIKES:

On August 15, 1951, Benedict entered into a contract with M. M. Campbell under which M. M. Campbell agreed to construct a certain slate disposal bin and an aerial tram

and bucket line for slate dumping. The amount of the contract was $12,500. Benedict agreed to furnish Campbell money at the end of each week's work for the purpose of meeting payrolls and $125.00 per week for five days or $25.00 per working day as an allowance to cover use and maintenance of tools and services as boss. Further details of the contract are shown on pages 181a, 182a and 183a of the record.

Campbell apparently had started work a few days before the contract was executed. When Campbell started out he had his own working force of men that had worked with him on a previous job. His employees were carpenters and concrete mixers and people experienced in that kind of work. The job required skilled workers. After Campbell commenced work, Benedict had several meetings with the Benedict Committee and the District Representative, Mr. Scroggs, at which times the Committee and Mr. Scroggs insisted that Mr. Campbell hire and work several Benedict men who were coal miners and who were laid off at the time. (R. 184a, 185a). These laid off coal miners were not carpenters or other skilled tradesmen. Campbell had done some dynamiting and shooting inside a shop building to make a grease rack; and after he did that job, the Mine Committee and the President of the Benedict Local were more insistent than ever that Campbell work Benedict men and sign a United Mine Workers contract. (R. 188a). Mr. Campbell, Benedict personnel, the Local Committee and Mr. Scroggs had a meeting over this on or about January 15, 1952. The purpose of the meeting was to try to resolve the question of whether or not Mr. Campbell would work Benedict men or not. At the meeting Mr. Scroggs made the statement that if the mine worked, Benedict men were going to have to work on the Campbell working force. At that time Mr. Campbell apparently did not have a contract with the United Mine Workers. (R. 187a). At this meeting there were some words passed when Ellis Lynn called Campbell a worker of scab labor. (R. 188a). Mr. Campbell's reaction was very violent. Mr. Campbell did not do what the Union told him to do, and on the afternoon of February

7 and on February 8 Benedict had a strike. (R. 189a). Benedict had been told by Mr. Scroggs that the Benedict mine would not work unless Mr. Campbell signed a contract for his men to belong to the United Mine Workers. (R. 292a). The men went back to work and Benedict had a half day strike in March over Mr. Campbell and another strike in two days of April, 1952, being April 24 and 25. (R. 190a). The April strike was over still not working Benedict men and over Campbell's men not being taken into the Local Union after Campbell went to Norton and signed a contract.

Mr. Campbell also testified in the case and, among other things, stated that he had in his employ sometimes three or four and sometimes six or seven men. That he did the hiring and he had the right of discharge. (R. 331a). That the mine workers wanted him to hire the men that had been in their Benedict Local and that they said that his men should belong to the Union. (R. 333a). That he had a considerable bit of trouble about this and on one occasion one of the group getting ready to go into the pit threatened to roll his truck over the hill. (R. 334a, 335a). That seemingly they had a boss somewhere because when they would come to tell him, "We are going to strike Mr. Darst's mine and the boss told us we knowed what to do." That Mr. Scott most of the time approached him, and he would say, "We are going to blow it out tomorrow." (R. 335a).

Campbell further testified that the idea was to make him sign a United Mine Workers contract, which he finally did, as if he were a coal operator, not a construction worker. (R. 336a). Campbell testified he attended a meeting prior to a February strike in Mr. Darst's office and that Mr. Scroggs, a Field Worker of District 28, was down there. That at that meeting Scroggs told Mr. Scott, "If you don't get what you want, you know what to do." (R. 339a). That at the meeting the main idea was to get him to work Benedict men and that something was said about him signing the contract. (R. 339a). That it was made very plain by Mr. Scroggs if he didn't sign a United Mine Workers contract, quoting "Mr. Scroggs looked at Mr.

Jim Scott and said 'If we don't get what we want, you know what to do'." (R. 339a, 340a).

There was further testimony by Mr. Campbell that he finally signed the United Mine Workers Contract and that there was a half day strike there. That when he agreed to go with a Committeeman and the president of the Local to District 28 and sign the contract, they gave the go ahead sign to work. (R. 340a).

Mr. Campbell further testified that he went to Norton to sign the contract and when there the District President, Mr. Condra, stated, in Campbell's words: "I did sign it, and the president, Mr. Condra said, 'I had the damm son-of-a-bitch blowed out'. That was the Benedict blowed out, if I hadn't signed the contract." (R. 341a). That in mine parlance the expression "blow out" means the calling of a strike. (R. 342a). Campbell further stated that he had more strikes. That Mr. Scott and Mr. Grant Mullins would see him and say, "The boss sent us here to shut you down if you don't do something." (R. 344a). That he did not take the coal miners on his payroll because he couldn't use them and that he had strikes at a later date. (R. 344a). Campbell had interference after he signed the contract with his men going to work. (R. 345a). After Campbell signed the contract, Mr. Scott wanted him on a Saturday to bring his men down to the Local to join. He got his men together and went to the Local, but the Local would not take them in for the reason that the Local had men laid off. That he quit in August.

The Campbell strikes were necessarily after the previous instructions had been given to Scott that if they did not get what they wanted they knew what to do and after the previous failure of the Union to discipline its employees for strikes and to use their best efforts through available disciplinary measures to prevent strikes.

(6) THE STRIKE OF AUGUST 5-6, 1952, OR THE ANDERS ROARK STRIKE:

In August, 1952, Benedict had two employees by the

names of Anders and Roark. These men carelessly applied the power to a locomotive without anybody being on the locomotive before checking it to see if the control was taken off and when the power was applied, the locomotive started up by itself, unattended, and plunged off a 20 or 30 foot embankment into the creek and took several mine cars along with it. Although Anders and Roark were not trackmen, they had been given that job and had been working at it from time to time before. Anders admitted in his testimony that he did not know whether Roark was at the locomotive when he turned the electricity on but that he gave him plenty of time to get there and that he never asked him why he didn't get there. (R. 633a, 634a). Anders admitted he had used the motor to haul steel for track material before and he knew how to run one and had experience with motors of that type. The men were discharged for their negligence and on the 5th day of August everybody was on strike because of the discharge. (R. 173a, 174a). Mr. Clark, the Field Representative, came down, and his position was that Benedict had to give these men back their jobs and had no right to fire them. Clark did not agree to arbitrate it. The strike was resolved by the company giving in again and agreeing to put the men on some other work. The company made a job for them to put them back to work so that the mine could go back to work.

A grievance was later had as to whether or not the two men were due back pay, but this was after the strike was over.

This strike was necessarily after the instructions to Scott that if they did not get what they wanted, they knew what to do and was necessarily after the Union's failure to discipline the men for previous strikes and to use their best efforts through available disciplinary measures to prevent stoppages of former strikes and this strike.

(7) THE STRIKE OF MAY 18-27, 1953, OR THE BIG MOUNTAIN COAL COMPANY STRIKE:

In the spring of 1953 Benedict leased to Ora Swisher two

upper seams for stripping recovery around the contour crop line of the seam. Swisher moved in in April and was ready to run coal about May 1. Swisher had about 20 employees who were not members of the United Mine Workers. He had large steam shovels, bulldozers and a giant boring machine that bored into the seam of coal. He and his workers had to go by the Benedict Coal Corporation in order to get up to his operation. About the time Swisher was getting ready to run coal Guy Darst, Dexter Rains and Ura Swisher went to see Allen Condra, the president of District 28 in his office in Norton, Virginia. At the time Swisher's employees were willing to join the United Mine Workers but they wanted a Local of their own. At the meeting Mr. Condra flatly refused to let the Big Mountain Coal Company have their own local. (R. 195a, 196a.)

According to Guy Darst at that meeting Condra also stated, "You are going to have an awful lot of trouble down at Benedict out of the Benedict men if you don't sign this contract." (R. 197a).

At the time of the meeting the name of the Big Mountain Coal Company had not been chosen, and Mr. Swisher offered to go ahead for a few days until his attorneys had picked a name, to pay dues, pay welfare, and pay Union scale, and sign the contract when the name had been chosen. Mr. Condra advised him he couldn't operate that way and that he would have to sign a contract right here. To that Swisher said, "Damm it, if you can't trust me for a few days, I can't trust you. We'll operate anyway." (R. 197a, 198a). After Swisher made that remark Mr. Condra said, "We will do everything in our power to keep you from operating." (R. 198a). There was apparently an agreement on Swisher's part at that time to sign a contract when a name had been chosen provided his employees got their own Local, and Swisher later signed a contract on that condition. Before the meeting broke up, Condra stated, "I'm the man that decides whether or not you get your own separate Local or whether those men go to the Benedict Local." (R. 198a). The contract was signed and sent

back May 14, and a letter accompanied the contract setting forth the condition. (R. 457a). After that the Benedict mine came out on Strike on May 18 and 25 or 30 of the Benedict men formed a picket line in the middle of the road which was the access road to Mr. Swisher's operation. This picket line closed down Swisher's operation. (R. 199a). Benedict stayed down until May 27. Benedict's men were apparently willing to come back to work before then, but Darst was not notified until up to the middle of the week beginning May 18. Benedict, however, waited until the 27th or 28th to go back to work because they had lost by the strike a lake order to the Great Lakes. They did not fill the order because the men were on strike and they could not produce the coal in time enough to meet the boat, and they did not get other business to resume operations in the No. 5 mine up until the following week. (R. 199a, 200a, 202a). During this time Big Mountain was not operating because they were being picketed by the Benedict men and kept from going to work. Benedict's strike ended simultaneously when they got another lake order and with the ending of the Benedict strike against the Big Mountain Coal Company to force the Big Mountain employees into the Benedict Local. Mr. Swisher got an injunction against the Union to prevent them from picketing him. (R. 202a; 203a).

On May 20 Guy Darst had sent John L. Lewis a letter advising him that he intended to hold the Union responsible for damages. At the time of the strike no one had told Guy Darst that his failure to pay royalties was the reason for the strike. (R. 203a, 204a).

Most of the above statement is based on the testimony of Guy Darst. Dexter Rains also testified about this strike and, among other things, testified that at the meeting with Condra which he attended, that Condra advised Swisher that if he did not sign the contract that he was afraid he would have trouble with the Benedict men. (R. 439a, 440a). He further testified that Condra said they would have trouble out of the Benedict men which he was afraid in turn would cause Benedict some trouble and that Condra would see the contract was signed. (R. 440a). He further

testified in response to a question as to what Condra stated, "Yes, sir, that they would see the contract was signed, that we would not work." Rains also testified that a strike followed the disagreement and that the issue was because the Big Mountain Coal Company did not have a contract with the Union and that there was an issue about whether or not the contract would be that Big Mountain employees would belong to the Benedict Local.

Ira Swisher also testified in the case. He stated that his men were willing to join the Union if they could get a Local of their own and that their men asked him to represent them and get a Local of their own. (R. 454a). He also quoted Mr. Condra as saying as best set out by copying from the transcript:

"Q. What did Mr. Condra say about that?

A. Mr. Rains and Mr. Darst and myself drove up to Mr. Condra's office and laid the card on the table to him, and he said we had to join the Benedict local, that he did not want two locals in the same mine, and we refused on the contract and he still insisted we had to join the local and he had the control of that.

Q. Did Mr. Condra make any statement as to what would happen if you did not sign according to his terms?

A. He said if we didn't sign up with him, with the Benedict local, we would have trouble with the Benedict local, the union, and everybody else in the Benedict mine would be down, and he said he had control of it. He requested me to sign the local.

Q. Did he state what would happen in the Benedict local if you did not sign?

A. He said there would be a strike until it was settled. He said we wouldn't be working, that was Mr. Condra's own mouth. (R. 454a, 455a)."

Mr. Swisher did not sign a contract that day but later signed three copies of the contract and returned them to

Mr. Condra by letter of May 14, 1953. In his letter he stated that he signed the copies on condition that his employees be granted a separate Local Union charter. (R. 457a). After he signed the contract and sent it to Mr. Condra, they had a strike on the Benedict property, several employees of the Benedict Local refused to let Swisher's men go on the mountain and formed a picket line. (R. 458a). Swisher gave the reason for the strike at the Benedict mine was because, "The idea of the strike was to us on there without a contract is the way I understand it." (R. 459a). The Benedict people refused to let his men go to work, and Swisher went to court and got an injunction against the Union. (R. 469a). After this injunction order was obtained, Swisher's men went back to work. (R. 460a). After the injunction Swisher's men apparently got a separate Local. (R. 463a).

ARGUMENT

Your respondent will follow the same order of argument as contained in the petition.

I.

The petitioners appear to argue that since previous no strike clauses that were contained in contracts prior to the 1950 contract were eliminated from the 1950 agreement, that the use of a strike to settle a dispute cognizable under the arbitration terms of the 1950 agreement was not a breach of the contract. It is our position that the abolition of the "no strike" provisions contained in previous contracts do not ipso facto give a contractual license to strike if the strikes are used to settle disputes cognizable under the settlement of dispute section of the 1950 and 1952 contracts. To hold otherwise would be to hold the contractual provisions regarding the settlement of disputes meaningless. The Sixth Circuit correctly analyzed the history of the contract and the meaning of the arbitration clause in this part of its opinion:

> "With all respect for the majority view expressed in the latter decision, we agree with the dissenting

judge in that case, and with the decisions in the **Haislip** and **Mead** cases, that a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement.

This conclusion does not make meaningless the express abrogation of a no strike clause in the 1950-52 agreement. The right to strike was preserved with respect to all disputes not subject to settlement by other methods made exclusive by the agreement. Moreover, the Unions remained free from liability for spontaneous or "wildcat" strikes. Such spontaneous strikes would be the kind of "stoppages" and "suspensions of work" which the agreement made subject to the settlement procedure therein provided."

The Sixth Circuit also correctly held that the decisions in the **United Construction Workers** v. **Haislip Baking Company**, 223 Fed. 2d. P. 873, and W. L. Mead, Incorporated v. International Brotherhood of Teamsters, 230 F. 2d. 576, were controlling in this point.

In the Haislip case a contract containing similar provisions for the adjustment of disputes was involved. The Court in that case correctly held:

"It is argued that a strike could not constitute a breach of contract which did not contain a no strike clause; but we think it clear that the purpose of the contract was to require the settlement of disputes and grievances by a procedure which would not cause the disruption of business that would necessarily result from a strike and that a strike without following such procedure was necessarily a breach. See Hazel-Atlas Glass Co. v. N.L.R.B., 4 Cir., 127 F. 2d 109; 31 Am. Jur. 1954 Cum. Supp. p. 174, Sec. 198.5, note 2 A.L.R. 2d p. 1287 and cases there cited."

A more recent case involving damages for breach of contract is Teamsters, Local 25 v. W. L. Meade, Incorpor-

ated, 230 Fed. 2d 576, decided by the United States Court of Appeals, First Circuit, on March 6, 1956. This case held:

> "Notwithstanding the absence of a specific no-strike clause, the district court ruled as a matter of law that the arbitration article of the agreement, providing that the machinery there set forth 'shall be the exclusive means of adjudicating all matters,' was unambiguous and 'that its meaning was that there should be no strike as to any matter appropriate under the agreement to be arbitrated, at least while the employer was not in default as to its own observation of the arbitration requirements.' We agree with this conclusion. We also agree with the district court that the parol evidence of the negotiations leading up to the signing of the agreement, so far as such evidence was credited by him, and assuming that it might properly be considered, 'does not lead me to any different conclusion from the one I have already reached without it, and on the whole tends to support it.'"

The plaintiff's evidence also clearly showed that the Union did not exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike pending adjustment of disputes. (R. 160a, 411a, 413a). This was not contradicted by any of the union's evidence. The petitioners were clearly in default on this obligation in the 1950 contract. At this stage of the case, all of the strikes but one are governed by the provisions of the 1950 contract and only one, being the strike of the Big Mountain Coal Company, is governed by the 1952 agreement. Under the 1952 agreement, it was still a violation of the contract to use a strike for the settlement of disputes and both parties agreed that all disputes should be settled by the machinery provided in the contract. In the 1952 contract, both parties still agreed to maintain the integrity of the contract.

II.

The Circuit Court of Appeals correctly held that District

28 and its agents were agents of the International Union with respect to the activities involved and the plaintiffs' evidence showed that the strikes were instigated by Field Rpresentative Scroggs. The record shows the duties of Field Representative Scroggs:

> "Q. What were your duties as a field representative?
>
> A. Well, in my duties as field worker, I handled grievances for the organization, trying to settle disputes that arose between the local unions and the coal companies.
>
> Q. And your work of that type covered these 28, whatever number of operations there was, 15, 20, or 28, in your particular area of the District 28?
>
> A. That's right.
>
> Q. Was the Benedict operation within your such field?
>
> A. It was.
>
> Q. As I understand this record, you were not there all the time. A little bit of the time there was a man by the name of Clark who was there, maybe somebody else
>
> A. That's right. From 1952 on Mr. Clark was there.
>
> Q. You were the field agent in 1950 and 1951 and part of 1952 that generally looked after complaints, trouble and so on, with reference to Benedict, were you not?
>
> A. That's right." (R. 571a).

The third step of the grievance procedure as contained in the contracts provided that an earnest effort shall be made to settle such differences immediately . . . "(3) through district representatives of the United Mine Workers and a commissioner representative (where employed) of the coal company." (R. 105a).

The Field Representative was acting within the scope of his employment. His actions constituted a refusal and a repudiation of the Union's obligations to use the con-

tractual provision for adjudication of strikes. The Union can act only through such Field Representatives or through officers. The job of the Field Representative was to help settle disputes. A purpose of the Union was to assist the men in adjusting their disputes. If they misused this purpose, the Union is liable. In this case, it was clearly the plan and purpose of the Union to run over the company with these strikes and in that manner force their demands upon the company.

We do not entirely agree with the Haislip case as cited by the plaintiffs, but we will note that Judge Parker stated that they were not dealing with a case where circumstantial evidence points to instigation of strikes by defendants or the agents who represented them. In this case, the system of strikes was instigated by the appellant's Field Representative.

We would also again refer the court to the case of Teamsters, Local 25 v. W. L. Mead, supra. In that case, a dispute arose because an employee was "gorunded." The business agent refused to arbitrate the matter and called the men out on strike. It was not an organizational matter. There was apparently no question of his authority to bind the Union. See also United Electrical Radio and Machine Workers of America, et al. v. Oliver Corporation, 205 Fed. 2d 376.

Appellants attempt to argue that the International union is not responsible for the acts of the field representatives or officers of the district. The organization of the United Mine Workers was shown by the requests for admissions read in this case and by the constitution filed as an exhibit. Under the constitution the international union is composed of workers eligible for membership in the United Mine Workers, and it is divided into districts, subdistricts and local unions. District 28 is a provisional district, and district officers are appointed by the international president, Mr. John L. Lewis. Provisional District 28 is a mere division of the international union. When the field representative was working on disputes or local troubles, he was

doing work provided for by the contract agreed to by the international union. See R. 365a to 372a for further evidence of control of the District by the international union.

The Coronado Coal case is no precedent here. It was decided many years before the Taft-Hartley Act of 1947, which provides, among other things (29 U.S.C. 185):

> (b) "Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the Courts of the United States. Any money judgment against a labor organization in a District Court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."
>
> . . . . . .
>
> (e) For the purpose of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Passage of the Taft-Hartley Act followed within a few months the decision of the United States Supreme Court in the case of Brotherhood of Carpenters v. United States (1947), 330 U.S. 395. The decision which involved section 6 of the Norris-LaGuardia Act (29 U.S.C. 106) contained this language (330 U.S. 403):

> "We hold that its purpose and effect was to relieve organizations, whether of labor or capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of

> the organization, without clear proof that the organization ormember charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration."

The purpose of the above quoted provisions of the 1947 statute, according to Senator Taft, was "to apply the ordinary rules of law of agency to labor organizations, notwithstanding resolutions on their part disclaiming responsibility for the action of persons who, in reality, are acting in their behalf." (See United Construction Workers v. Haislip Baking Co., 4 Cir. (1955), 223 F. (2d) 872, 878.

The Haislip decision quotes the following excerpt of a statement made by Senator Taft to the Senate, reported in 93 Cong. Record, p. 7001, Legislative History of Labor Management Relations Act, Vol. 2, page 1622 (23 F. (2d) 818, 879):

> "It is true that this definition was written to avoid the construction which the Supreme Court in the recent case of United States against United Brotherhood of Carpenters placed upon Section 6 of the Norris-LaGuardia Act which exempts organizations from liability from illegal acts committed in labor disputes unless proof of actual instigation, participation, or ratification can be shown. The construction of the Supreme Court placed on this special exemption was so broad that Mr. Justice Frankfurter, speaking for the dissenting minority, pointed out that all unions need to do in the future to escape liability for the illegal actions of their officers is simply to pass a standing resolution disclaiming such responsibility. The conferees agreed the ordinary law of agency should apply to employer and union representatives. Consequently, when a supervisor acting in his capacity as such, engages in intimidating conduct or illegal action with respect to employees or labor organizers his conduct can be imputed to his employer regardless whether or not the company officials ap-

proved or were even aware of his action. Similarly union business agents or stewards, acting in their capacity of union officers, may make their union guilty of an unfair labor practice when they engage in conduct made an unfair labor practice in the bill, even though no formal action has been taken by the union to authorize or approve such conduct."

The petitioners cite the case of Garmeada Coal Company v. International Union, UMWA, 122 Fed. Supp. 512, 230 Fed. 2d 945. In reading the latter opinion, we find that the per curiam decision expressly states that there was no proof that the international field agent instigated or incited the strike. Therefore, that case would not be controlling here. The Sixth Circuit clearly stated th applicable law in this portion of their opinion in this case:

"The jury were properly instructed that the Unions were responsible for the acts of their representatives only if the latter were engaged within the scope of their employment or authority, but that actual authorization of specific acts was unnecessary. 29 U.S.C., § 185(c). Moreover, the fact, if it is so, that field representatives of the District lacked actual authority to call strikes is not controlling. These representatives were sent by the District to attempt to settle local disputes at the Benedict mine. The declarations attributed to Scroggs all took place while he was on these missions. The calling of a strike was clearly one way to "settle" a labor dispute, although a way not permitted by the agreement. Consequently the jury were amply justified in finding that Scroggs was acting within the scope of his employment when he made the declarations in question. Compare, United Mine Workers v. Patton, 211 F. (2d) 742 (4 Cir., 1954), with Garmeada Coal Co. v. International Union, 122 F. Supp. 512 (E. D. Ky., 1954), aff'd., 230 F. (2d) 945 (6 Cir., 1956)."

III.

In Paragraph 3 under petitioners' heading "Reasons for

Granting the Writ," the petitioners attack the sufficiency of the evidence which sufficiency has been upheld by the trial court and by the Sixth Circuit. We have already noted the evidence in the statement of facts portion of this brief. It was clearly sufficient. Not only was there the evidence of Scott, but there was the corroborating evidence of Guy Darst and M. M. Campbell.

M. M. Campbell testified in regards to a meeting held in January, 1952:

> "Q. What if anything was said to you by Jim Scott on that occasion? I will use him to start with. What did he say to you about it? Mr. Scroggs, what was said:
>
> A. Mr. Scroggs told Mr. Scott, "If you don't get what you want, you know what to do." (R. 339a)."

Guy Darst also corroborated Scott in Darst's testimony about the vacation strike. (R. 167a):

> A. I believe so, yes. We asked for arbitration of that.
>
> Q. What did Mr. Scroggs say as to that?
>
> A. Mr. Scroggs said these men are due all of their vacation pay in cash, and he also said after one of the meetings was over, within my hearing, 'Boys, it looks like you are going to have to take this matter into your hands.'
>
> Q. Who was he talking to at that time?
>
> A. He was talking to the committee.
> your mines?
>
> A. We had the strike. I believe the meeting was the Saturday preceding the Monday and Tuesday which are the 30th and 31st.
>
> Q. Was that matter arbitrated, that strike arbitrated?
>
> A. No.
>
> Q. Did Mr. Scroggs at that time make any statement

about whether or not it was a matter for arbitration? A. Yes, he did. I believe he said that 'This isn't a matter for arbitration. We won't arbitrate it'."

There is also the uncontradicted evidence of a violation of the 1950 agreement by the failure of the unions to use their best efforts through available disciplinary measures to prevent work stoppages. (R. 216a, 411a and 412a).

The petitioners then argue that neither the vacation pay dispute, the credit dispute, nor Campbell or Big Mountain disputes were cognizable under the agreements. The settlement of local and district disputes Section of both contracts provides as follows as to the types of disputes to be settled under the machinery of the contract:

> "Should differences arise between the Mine Workers and the Operators as to the meaning and application of the provisions of this Agreement, or **should differences arise about matters not specifically mentioned in this agreement,** or should **any local trouble of any kind** arise at the mine, an earnest effort shall be made to settle such differences immediately." (Bold Face ours).

All of the disputes in issue were cognizable under the contract.

IV.

The petitioners then claim that it was error to permit Scott to answer the question: "What did you understand him to mean when he said 'You know what to do'?

James Scott testified in various places that Scroggs told him, "If you don't get what you want, you know what to do." (R. 408a, 412a, 414a, 418a, 419a, 423a, 424a). Scott also testified what he understood this to mean and it was proper to allow it. (R. 409a). We should consider a little more of the testimony than was set out in Appellants' Brief. (In the Record, Page 408a):

> "Q. Now you spoke of Mr. Scroggs. During the time of that strike or disturbance, did he confer with you

or any member of the local that you know of?

A. He did.

Q. What did he tell you?

A. Well he told us, he says, "Boys, I can't tell you"—he says, "I can't tell you boys when to strike. I can't come out and tell you to strike, but when I tell you when you don't get what you want why you boys know what to do then."

It was apparent that Scroggs wanted them to know that these words had a different or special meaning. If we look in 20 Am. Jur., Evidence, Section 825, we find this:

> "Where the words spoken or the actions taken have a doubtful, ambiguous, or hidden meaning, the person who used the words may not only testify as to his meaning, but all persons who heard the words spoken may testify as to what they understood the speaker meant by the use of such words."

The words of Scroggs definitely had a hidden meaning and Scott's testimony was clearly admissable.

V.

As noted by the Sixth Circuit, it was unnecessary to consider whether the M. M. Campbell strike or the Big Mountain Coal Company strike were violative of Section 303 of the Taft-Hartley Act because the jury, in its verdict, decided that these strikes were violations of the contract. However, there was sufficient evidence as to these strikes to submit the question to the jury as to whether they were violative of the Secondary Boycott Divisions of the Taft-Hartley Act.

(1) The M. M. Campbell Strikes:

There was evidence noted in our Statement of Facts that after a certain dynamiting job was done by Campbell, the Mine Committee and president of the Benedict Local were insisting that Campbell work Benedict men and sign

a United Mine Workers contract. Benedict had been told by Mr. Scroggs that the Benedict mine would not work unless Mr. Campbell signed a contract. Campbell testified as to his trouble, that the idea was to make him sign a United Mine Workers contract, which he finally did, as if he were a coal operator and that at the meeting in Darst's office in January that something was said about his signing the contract and that it was made very plain by Mr. Scroggs what would happen if he didn't sign a United Mine Workers contract. There was evidence that the men struck in February because Campbell didn't do what the Union requested, and Campbell testified that when he agreed to go with a Committeeman and the Local president to sign the contract that they gave the go ahead sign to work. Campbell further testified that Condra stated that he had the Benedict "blowed out" if he hadn't signed the contract. This evidence clearly shows a breach of that portion of the Labor Management Relations Act in Title 29 USCA, Section 187:

> (a) "It shall be unlawful . . . for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to . . . work on any goods . . . or to perform any services where an object thereof is
>
> . . . . . .
>
> (2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees. . . .

(2) The Big Mountain Strike:

The evidence clearly showed that the district president threatened that if Swisher didn't sign up with him, with the Benedict Local, that everybody else in the mine would be down and that the district president had control over it. (R. 197a, 198a). (R. 454a, 455a). When Swisher returned the contract on Swisher's condition and not according to

Coindra's terms, the strike followed. (R. 198a). The evidence clearly showed that the strike was called for the purpose of making Swisher sign the contract on Coindra's terms.

It is undisputed that Swisher was a lessee of Benedict. Swisher formed his own corporation. Swisher had his own employees. Benedict and Big Mountain were clearly separate employers.

CONCLUSION

Your respondents, therefore, insist that for reasons herein discussed, a Writ of Certiorari should not issue for grounds assigned in the petition.

Respectfully submitted,

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